SINGAPORE REPORTS

CHAN HENG WAH & ANOR. v. PEH THIAM CHOH & ANOR.

[C.A. (Sinnathuray, Rajah & Thean JJ.) September 29, 1987]

[Singapore — Civil Appeal No. 76 of 1985]

Tort — Road accident — Liability admitted — Quantum of damages — What is the available surplus — What is the appropriate multiplier — Loss of earnings for "lost years" — Quantum — Interest on damages — Whether should be awarded.

Damages (Personal Injury or Death) — What is the available surplus — What is the appropriate multiplier — Loss of earnings for "lost years" — Quantum — Interest on damages — Whether should be awarded.

The second defendant's sister, Chan Sui Keng, was killed in a road accident in which the motorcar driven by the second defendant collided with the taxi driven by the first defendant. The plaintiff Chan Heng Wah, as administrator of the estate of Chan Sui Keng deceased, brought this action against the defendants. Liability was admitted in the proportion of 90% on the part of the first defendant and 10% on the part of the second defendant. At the trial the following damages were agreed upon:

(a) a sum of $6,500 for loss of expectation of life;

(b) a sum of $3,000 for funeral expenses; and

(c) a sum of $600 for loss of use of the car.

The plaintiff claimed damages for loss of earnings for the lost years. On this claim, the learned judge awarded $125,000.

At the time of her death, the deceased was 20 years of age and a medical student. The learned trial judge held that the prospective earnings of the deceased should be at a level of a medical registrar and computed her net earnings at that level. The learned trial judge took $56,494.34 as the annual multiplicand. He also took 20% of $56,494.34 as the available surplus. Next his Lordship adopted a multiplier of 11 and arrived at $125,000.

Interest on both general and special damages was disallowed.

The present appeal was against that part of the judgment awarding damages for loss of earnings of the deceased during the lost years and disallowing interest on the damages awarded.

Held: (1) the prospective earnings of the deceased which were assessed were not manifestly or excessively low;

(2) from the authorities it was clear that savings, if any, which a deceased would have been likely to have available would form part of the available surplus;

(3) in the Singapore context it was inescapable that the available surplus must include the amount in the CPF account of an employee which is quite considerable;

(4) having regard to the scheme of enforced savings provided under the Central Provident Fund Act and other factors, the available surplus in this case should be 40% of the net prospective earnings;

(5) the multiplier should be 15;

(6) therefore $338,966.14 would be a fair amount of loss of earnings of the deceased for the lost years;

(7) interest should be awarded on the following amounts of damages: (i) $6,500, (ii) $3,000 and (iii) $600 at 6% per annum from the date of issue of writ to date of judgment of the High Court.

Cases referred to:

(1) *White* v. *London Transport Executive* [1982] 1 Q.B. 489.
(2) *Harris* v. *Empress Motors Ltd.* [1984] 1 W.L.R. 212.
(3) *Ban Pet Hock* v. *Ong Ah Ho* [1966] 2 M.L.J. 253.
(4) *Lai Chi Kay & Ors.* v. *Lee Kuo Shin* [1981] 2 M.L.J. 167.
(5) *Pickett* v. *British Rail Engineering Ltd.* [1980] A.C. 136.
(6) *Gammell* v. *Wilson* [1982] A.C. 27.
(7) *Wilson* v. *Stag* [1986] 136 N.L.J. 47.
(8) *Low Kok Tong* v. *Teo Chan Pan* [1982] 2 M.L.J. 299.
(9) *Lai Wee Lian* v. *Singapore Bus Service (1978) Ltd.* [1984] 1 M.L.J. 325.
(10) *Lee Soon Beng* v. *Wee Tiam Sing* [1986] 2 M.L.J. 340.

COURT OF APPEAL.

Chettiar Karuppan (*Leslie Chew* with him) for the appellants.

Abdul Rashid for the first respondent.

Christopher Lau (*Anne Loke, Miss,* with him) for the second respondent.

Cur. Adv. Vult.

Thean J. (delivering the judgment of the court): At about 7 a.m. on July 31, 1980, a motor taxi driven by the first defendant along Ang Mo Kio Avenue 5 in the direction of Ang Mo Kio Avenue 10 collided into a motor-car driven by the second defendant which was travelling along Ang Mo Kio Avenue 6 in the direction of Marymount Road. The second defendant's sister, Miss Chan Sui Keng, who was a passenger in the car driven by him, was fatally injured in the collision. Arising from the accident, the appellant, Chan Heng Wah, as the administrator of the estate of Chan Sui Keng deceased, brought this action against the first and second defendants claiming damages. The two defendants on the first day of hearing before Chua J. in the High Court admitted liability in the proportion of 90% thereof on the part of the first defendant and 10% thereof on the part of the se-

cond defendant. The parties at the trial also agreed on the following amounts of damages, namely:

(a) a sum of $6,500 for loss of expectation of life;
(b) a sum of $3,000 for funeral expenses, and
(c) a sum of $600 for loss of use of the car.

The appellant also claimed damages for loss of earnings for the lost years. On this claim, the learned judge awarded a sum of $125,000.

At the time of her death, the late Miss Chan Sui Keng ("the deceased") was 20 years of age and was a second year medical student in the National University of Singapore. She had very good results in her "O" and "A" Level Examinations and was awarded a government scholarship to study medicine at the University and was bonded to work for the government for eight years on completion of her medical studies. At the date of the accident she had completed her first year examination and her results were of average standard. The learned judge held that in all probabilities she would qualify as a doctor. Having reached that conclusion he, however, discounted any prospect of the deceased reaching a specialist level on the ground that that attainment was too speculative. For the same reason he also disallowed the claim for pension and gratuities. He rejected the contention made on behalf of the appellant that the deceased's income should be determined on the basis of a mean between a medical officer's salary and Grade A Superscale salary. He held that the prospective earnings of the deceased should be at a level of a medical registrar and computed her net earnings at that level as follows:

Monthly salary of registrar	$ 3,275.00
NWC element per month	$ 493.48
Monthly salary and NWC wage supplement	$ 3,768.48
Gross annual earnings including 13th month payment	$48,990.24
Add: Contribution to CPF by employer (at the rate then prevailing)	$12,247.56
	$61,237.80
Less income tax	$ 4,743.46
	$56,494.34

He took that sum of $56,494.34 as the annual multiplicand and then proceeded to make the necessary deductions for the deceased's personal living expenses, which he was obliged to do. In doing so he followed the decisions of Webster J. in *White* v. *London Transport Executive*[1] and the Court of Appeal in England in *Harris* v. *Empress Motors Ltd,*[2] and he adopted the concept of available surplus propounded by Webster J. and approved by the Court of Appeal and took 20% of $56,494.34 as the available surplus. Next, the learned judge adopted a multiplier of 11 which he considered proper, and applying the multiplier to 20% of $56,494.34 he arrived at a sum of $125,000 as the damages for the loss of earnings of the deceased during the lost years.

Lastly, the learned judge following the decision in *Ban Pet Hock* v. *Ong Ah Ho*[3] disallowed interest on both the general and special damages awarded.

This appeal is against that part of the judgment awarding damages for loss of earnings of the deceased during the lost years and disallowing interest on the damages awarded. The issues that emerged are as follows: (i) the assessment of prospective earnings of the deceased; (ii) the assessment of available surplus on such prospective earnings; (iii) the relevant multiplier applicable, and (iv) interest on the various amounts of damages awarded.

I. *Prospective earnings of the deceased*

The learned trial judge considered the level of a medical registrar's earnings as the appropriate prospective earnings of the deceased. It was contended by Mr. Karuppan on behalf of the appellant that this approach was wrong. He relied on the case of *Lai Chi Kay and Ors.* v. *Lee Kuo Shin.*[4] There, the plaintiff, Lai, who was from Hong Kong and was a fourth year medical student, sustained extensive brain injuries in an accident for which the defendant was wholly to blame, and the learned judge in assessing the prospective earnings of Lai adopted as a reasonable and fair basis a sum representing the mean between the maximum and the minimum salaries in the Hong Kong medical service. In the instant case, the learned judge was not persuaded to adopt the mean between a medical officer's salary and Grade A Superscale salary. But the basis he adopted in arriving at the prospective earnings is not wrong. He discounted all the speculative elements and made an assessment on the basis of what he considered to be fair and reasonable. All that can be said is that he had adopted a conservative approach and the amount he assessed was on the low side. But on that ground we would not be justified in interfering with his assessment. The amount,

in our view, was not manifestly or excessively low.

II. *Assessment of available surplus*

In *Pickett* v. *British Rail Engineering Ltd.*[5] it was held, *inter alia*, that in assessing damages for loss of earnings during the lost years there should be deducted from the total earnings the amount the deceased would have spent upon his own living expenses and pleasures, as these would represent an expense that would be saved in consequence of his death. Lord Wilberforce said, at p. 151:

"... the amount to be recovered in respect of earnings in the "lost" years should be after deduction of an estimated sum to represent the victim's probable living expenses during those years. I think that this is right because the basis, in principle, for recovery lies in the interest which he has in making provision for dependants and others, and this he would do out of his surplus."

Similarly, Lord Salmon said, at p.154:

"I think that in assessing those damages, there should be deducted the plaintiff's own living expenses which he would have expended during the "lost years" because these clearly can never constitute any part of his estate. The assessment of these living expenses may, no doubt, sometimes present difficulties, but certainly no difficulties which would be insuperable for the courts to resolve – as they always have done in assessing dependency under the Fatal Accidents Acts."

Perhaps, the most helpful statement of law in general terms on this point is found in the speech of Lord Scarman in *Gammell* v. *Wilson*[6] at p. 78, where he said.

"The problem in these cases, which has troubled the judges since the decision in *Pickett's* case [1980] A.C. 136 has been the calculation of the annual loss before applying the multiplier (*i.e.* the estimated number of lost working years accepted as reasonable in the case). My Lords, the principle has been settled by the speeches in this House in *Pickett's* case. The loss to the estate is what the deceased would have been likely to have available to save, spend, or distribute after meeting the cost of his living at a standard which his job and career prospects at time of death would suggest he was reasonably likely to achieve. Subtle mathematical calculations based as they must be on events or contingencies of a life which he will not live are out of place: the judge must make the best estimate based on the known facts and his prospects at time of death."

The question invariably turns on what expenses and how much should be deducted to meet "the cost of his [the deceased's] living at a standard which his job and career prospects at the time of death would suggest he was reasonably likely to achieve." This was considered and discussed at great length in two recent cases, namely, *White & Anor.* v. *London Transport Executive*[1] and *Harris* v. *Empress Motors Ltd.*[2]

In *White & Anor.* v. *London Transport Executive*,[1] the deceased at the time of his death was a single man and lived with his mother and stepfather. While employed by the defendants, he died in an accident at work. At the time of his death, he was 25 years of age and had no savings and his estate of about £2,000 consisted mainly of moneys paid under the insurance policies. The plaintiffs, as administrators of his estate, claimed against the defendants under the Law Reform (Miscellaneous Provisions) Act 1934 and the Fatal Accidents Act 1976. Liability was admitted and claims for loss of dependency and payments to his estate for loss of expectation of life and for funeral expenses were all agreed. The only issue was the amount to be awarded in compensation for the earnings which the deceased would have received for his death, but which, as a result of his death, he could not receive, that is to say, loss of earnings during the lost years. In making his assessment, Webster J. approached the problem in the following manner. First, he held that the loss to be assessed was the loss of the deceased. He said, at pp. 494-495:

"... the Law Reform (Miscellaneous Provisions) Act 1934 did not create a cause of action. It merely preserved for the benefit of the deceased's estate the cause of action vested in him on his death. That cause of action in the present case is a cause of action in negligence, which does not exist unless damage can be proved, and the damage which has to be proved can only be the damage to the deceased. It must equally be that same damage, that is to say, the damage to the deceased, which is the damage which has to be assessed when an award is made for the deceased's lost years' earnings."

Secondly, he rejected the argument that the loss is limited to the amount which the deceased would have been likely to have saved. Thirdly, he held that no deduction is to be made to take account of the money the deceased would have spent on his dependants. He then defined the loss in the following broad terms, at p. 499:

"Having decided that the three particular principles, for which Mr. Scrivener contends, are not to be applied in assessing the loss, I now have to find one which is to be applied. The House of Lords have quite clearly laid down that living expenses at the very least are to be deducted from the deceased's net earnings. At the same time they have laid down that the award is not to be a conventional one. The court therefore has to measure in pecuniary terms the loss of something which is less, and appreciably less, than the deceased's prospective net earnings. What is that thing, the loss of which is to be measured? If it can be posi-

tively defined, as distinct from being deducted from what is left after certain not very precisely defined deductions are made, it seems to me that the thing, the loss of which has to be measured, is the amenity of earning more than is needed to live a reasonably satisfying and potentially enjoyable life, taking into account in each case the particular circumstances of life of the particular deceased person. Thus, for example, in this day and age the ordinary working man's life would not be regarded by him as reasonably satisfactory and potentially enjoyable if he could not afford a short holiday, a modest amount of entertainment and social activity and, depending on his particular circumstances, a car. And it seems to me, therefore, that the amenity which he is deemed to have lost is the difference between what would be the cost of maintaining himself and providing those facilities and his prospective net earnings; and in the cost of maintaining himself I include the cost of his housing, heating, food, clothing, necessary travelling and insurances and things of that kind, if relevant."

Webster J. proceeded to assess the deceased's available surplus on the evidence before him. He found that "the deceased's earnings were reasonably appropriate for a man in his circumstances, giving him neither more nor less than an average surplus expressed as a percentage of his net earnings." The average available surplus in that case, he held, would be 25% of the net earnings of the deceased. However, since at the time of his death, the deceased was living with his mother, that was a factor which would increase his surplus as he would spend less on housing and heating. On this basis, the learned judge came to the conclusion that the available surplus for the first five years of the fifteen years which he adopted as the multiplier should be one-third of the net earnings of the deceased and the remaining ten years should be one-quarter.

The "available surplus" solution was approved by the Court of Appeal in *Harris* v. *Empress Motors Ltd.*[2] O'Connor L.J., in his judgment (with which Goff and Stevenson L.JJ. agreed), also laid down three principles in determining the expenses to be deducted. He said, at p. 228:

"I return to the two decisions in the House of Lords. In my judgment three principles emerge: 1. The ingredients that go to make up "living expenses" are the same whether the victim be young or old, single or married, with or without dependants. 2. The sum to be deducted as living expenses is the proportion of the victim's net earnings that he spends to maintain himself at the standard of life appropriate to his case. 3. Any sums expended to maintain or benefit others do not form part of the victim's living expenses and are not to be deducted from the net earnings."

Subsequently, in *Wilson* v. *Stag*[7] the Court of Appeal (consisting of Slade and Purchas L.JJ. and Sir Roualeyn Cumming-Bruce) also applied the "available surplus" solution. In that case, the deceased was a bachelor aged 25 at the time of his death, and during his lifetime he lived with another bachelor, sharing accommodation and living expenses. But he spent all his surplus money on going out with and entertaining his girlfriend. It was contended that in assessing damages for the loss of future earnings, there was to be deducted all moneys spent in entertaining his girlfriend with the result that there was nothing left which could constitute a surplus. This was rejected by Hodgson J., who adopted a multiplier of 16 and assessed the available surplus at the date of his death and five years thereafter as being one-third of the deceased's net earnings and for the remaining 11 years as being one-quarter of such earnings. His decision, on appeal, was affirmed by the Court of Appeal which held that in assessing damages recoverable by the estate for the loss of future earnings for the lost years, the fact that the deceased spent all his disposable income on entertaining his girlfriend was to be disregarded in determining the estimated living expenses to be deducted from his future earnings, as such expenditure did not fall within the category of "living expenses." This case is also of interest in that in determining the reasonable living expenses of the deceased, the court adopted an objective figure. Purchas L.J. said, at p. 47:

"In my judgment, the position is clear that for the purposes of a claim brought on behalf of the estate under the 1934 Act in the case of death occurring before January 1, 1983 the calculation of damages for loss of future earnings is to be made by taking as the base line the net earnings and subtracting a figure to represent the "saving" arising from the fact that as a result of the death money has been saved which would have reasonably been spent in order to support a lifestyle appropriate to a person in the deceased's position within the definition to be found in the judgment of Webster J. in *White* v. *LTE* as approved by this court in *Harris* v. *Empress Motors*. For this computation the way in which the deceased was in fact spending his earnings is only one factor which may be taken into consideration when computing as an objective figure his reasonable living expenses which are to be deducted by way of mitigation of the damages. In considering as a subjective matter the deceased's way of life, whether he spent the net earnings beyond the proportion required for his reasonable living expenses in line with his station in life should not be relevant for computing the surplus. As was said by Lord Scarman in *Pickett* v. *British Rail Engineering Ltd.* [1979] 1 All E.R. 774 at 798, whether a man's ambition be to build up a fortune, to provide for his family, or to spend his money on good causes, or merely a pleasurable existence, loss of the means to do so is a genuine financial loss."

Before we depart from these cases, there is one observation we wish to make. In *White* v.

London Transport Executive[1] the deceased was a heavy goods vehicle mechanic, earning about £72.80 per week on average after tax. During his lifetime he spent all his money, and at the time of his death he had no savings. Webster J. said, at p. 501:

"Finally, if the surplus to be assessed is that which would be represented by the money he would be likely to have saved by the time of his natural death, or after the period represented by a purchase of 15 years, I would make no award at all, because, out of all the various possibilities, I would find it most likely in this case that he would have no significant savings, and because, even if I were wrong about that, the calculation or assessment of the amount he would have saved by that date would be the purest speculation."

In *Wilson* v. *Stag*[7] the deceased during his lifetime spent all his money and also had no savings at the time of his death. It is not clear from the report what his occupation was. In both cases, the trial judges adopted the "available surplus" solution. In neither of the cases was it anywhere stated that in determining the available surplus, any savings which a deceased would have been likely to have saved was to be excluded. On the contrary, it seems to us that the "available surplus" solution even on the basis of that propounded by Webster J. must include savings, if any, which a deceased would have been likely to have saved. Indeed he held that the recoverable loss was not limited to the amount which the deceased would have been likely to have saved. Support for this can also be found in the following part of the speech of Lord Scarman in *Gammell's* case at p. 78 (which we quote again):

"The loss to the estate is what the deceased would have been likely to have available to save, spend, or distribute after meeting the cost of his living at a standard which his job and career prospects at time of death would suggest he was reasonably likely to achieve."

Further, O'Connor L.J., who accepted the "available surplus" in *Harris'* case, said, at p. 229:

"I think one can say in relation to a man's net earnings that any proportion thereof that he saves or spends exclusively for the maintenance or benefit of others does not form part of his living expenses. Any proportion that he spends exclusively upon himself does. In cases where there is a proportion of the earnings expended on what may conveniently be called shared living expenses, a *pro rata* part of that proportion should be allocated for deduction."

From these authorities, it seems to us clear that savings, if any, which a deceased would have been likely to have available would form part of the available surplus.

We now turn to the facts of the present case. The learned judge found, and we agree with him entirely, that in all probabilities, the deceased would qualify as a doctor, and he assessed the net prospective earning of the deceased at $56,494.34 per year, which is the annual multiplicand. The next question is how much should be deducted from this amount as representing the living expenses of the deceased. The approach adopted by the courts in England is to take a percentage of the net earnings as representing the available surplus. For instance, in *White & Anor.* v. *London Transport Executive*[1] Webster J. took as the available surplus one-third of the deceased's net earnings for the first five years of the fifteen years purchase and one-quarter of those earnings for the remaining ten years, and in *Wilson* v. *Stag*[7] Hodgson J. assessed the available surplus of the deceased for the first five years at one-third of the deceased's net earnings and for the remaining eleven years, at one-quarter of such net earnings. These percentages are a good guide to us but obviously cannot be followed rigidly.

In this case, the learned judge followed the English cases and also took a percentage of the net prospective earnings as the available surplus. He said:

"Following the English cases 15% can justifiably, on the facts of our case, be adopted as representing the surplus income but because CPF has to be taken into account the amount of surplus income is increased by the possibility of the CPF being utilised. In my view in our present case 20% would be appropriate."

Essentially, there are three main factors which are relevant in considering the quantum of available surplus in this case. First, the available surplus we are considering is that of a high and stable earner: the prospective earning of the deceased was that at a medical registrar's level amounting to $56,494.34 per annum. Secondly, the deceased was born and brought up in a family in which living expenses appeared to be relatively modest. The appellant has now retired; he retired on June 1, 1984. Prior to his retirement he was a special assistant to the Councillor of Public Affairs and Director of the United States Information Service in Singapore. The deceased was one of his four children. His eldest son is a doctor, who, at the time of the trial, was in the Ministry of Health and was a trainee in anaesthesia leading to a degree of Master of Medicine. He has another

daughter who is a pharmacist and, at the time of the trial, was pursuing a part-time course leading to a Master of Business Administration at the National University of Singapore. His younger son was then a final year medical student at the University. The deceased herself appeared to be a frugal person with very modest demands; at the time of her death she had a saving of $3,637.52 in her saving account with Post Office Savings Bank. Thirdly, we must take into account too the probability that the deceased would marry and in that event her surplus of disposable income would be likely to increase. Though the quantum of available surplus is an objective one, it is arrived at on the basis of all these subjective factors.

There is, in addition, one important factor which is unique in Singapore and is not found in all the English cases. It is the scheme of enforced or compulsory savings brought about by the Central Provident Fund Act (Cap. 36). Under the Act an employee is obliged to contribute a percentage of his wages (as defined in the Act) to his account with the Central Provident Fund Board ("CPF") and this is effected by a deduction made by the employer from the wages payable to the employee; and the employer, in addition to the wages paid to the employee, also has to contribute a perrcentage of the employee's wages and such contribution is credited to the account of the employee with CPF. Currently, an employee contributes 25% of his ordinary wages (as defined in the Act) subject to a maximum contribution of $1,500 and the employer contributes 10% of the ordinary wages subject to the maximum amount of $600, and in the case of additional wages (as defined in the Act), the rate of contribution is 25% from the employee and 10% from the employer, without any maximum limit.

In computing the prospective earnings of the deceased for the lost years, counsel for the plaintiffs and first defendant accept that the contributions to the CPF by the employee and employer are part of the earnings of the deceased. Counsel for the second defendant, however, disputes that the employer's contribution is part of the earnings. He argues that such contribution is statutory and is not negotiable; it is subject to variation by the government from time to time. But, all the same, it is a payment made to the account of the employee with the CPF, and once paid it is credited to and is treated, to all intents and purposes, as part of his funds with the CPF and available to him for use in the manner and to the extent authorised by the Act and rules made thereunder.

In our opinion, in the Singapore context, it is inescapable that the available surplus must include the amount in the CPF account of an employee, which is quite considerable. It is common knowledge that an employee in Singapore, after a period of 10 years or more of service, amass a large amount in his CPF account – such amount, of course, varies with the earnings of the employee. It is true that an employee may withdraw certain amounts from his CPF account for investment in stock and shares of public quoted companies or in purchase of immovable property. But such withdrawal is always subject to the obligation to repay to the CPF account upon realisation of the investment or the immovable properties, plus interest lost on the amount so withdrawn. Having regard to the scheme of enforced savings provided under the Central Provident Fund Act and the other factors discussed, we think that the available surplus in this case should be 40% of the net prospective earnings.

III *The relevant multiplier applicable*

We think that the multiplier selected by the learned judge is low and is out of line with those in comparable cases. In *Lai Chi Kay's* case, the multiplier was 15; in *Low Kok Tong* v. *Teo Chan Pan*[8] the multiplier was also 15. So was the same multiplier adopted by the Privy Council in *Lai Wee Lian* v. *Singapore Bus Service (1978) Ltd.*[9] Having regard to those cases, in our opinion, the multiplier should be 15.

Applying the multiplier of 15 to 40% of the multiplicand of $56,494.34 results in a sum of $338,966.04. This, in our view, would be a fair amount of loss of earnings of the deceased for the lost years.

IV *Interest*

Following the decision of this court in *Lee Soon Beng* v. *Wee Tiam Sing*[10] interest should be awarded on the following amounts of damages: (i) $6,500 for loss of expectation of life, (ii) $3,000 for funeral expenses and (iii) $600 for loss of use of the car, totalling $10,100. As for the sum of $338,966.04 being damages for loss of earnings for the lost years we are of the opinion that no interest should be awarded. We agree entirely with the submission made on behalf of the respondents that a claim for such loss of earnings is akin or analogous to a claim for loss of future earnings or a claim for future pecuniary loss and what the estate of the deceased receives is an amount well in ad-

vance of what the deceased but for the fatal accident would receive.

Accordingly, we vary the judgment below as follows: we substitute the sum of $338,966.04 for $125,000 as damages for the loss of earnings during the lost years, and award interest on the sum of $10,100 at 6% per annum from the date of the issue of the writ to date of judgment of the High Court. The respondents will have to pay the costs of his appeal. There will be the usual consequential order for refund to the appellant or his solicitors of the amount deposited in court as security for costs of the respondents.

Order accordingly.

Solicitors. *Murphy & Dunbar; Khattar Wong & Partners; Cooma, Lau Loh & M. Karthigesu.*

ARUMUGAM & ANOR. v. LIM BOON NEO

[C.A. (Wee Chong Jin C.J., Sinnathuray & Thean JJ.) October 9, 1987]

[Singapore – Civil Appeal No. 82 of 1984]

Land Law – Whether tenancy was created.

Civil Procedure – Whether appellate court justified in reversing trial judge's decision.

The appellants were the administrators of the estate of their deceased mother, Perumal Ramayee. The respondent is the widow of G. Sarangapany. G. Sarangapany and the father of the appellants were partners of a company called S.V. Co.

The appellants alleged that Perumal Ramayee had granted a licence to S.V. Co. to store their goods and to provide accommodation to one Ramasamy at the premises, the subject matter of the present action.

The respondent's defence was that the deceased had orally granted a tenancy of the said premises. They also alleged that they had paid rent for the premises. The respondent claimed to be tenant of the premises by virtue of her succeeding to the business upon her husband's death. The appellants claimed possession of the premises. The learned trial judge concluded that the respondent had failed to prove, on a balance of probabilities, the existence of the tenancy alleged and that S.V. Co. had been granted a mere licence by the deceased to store goods on the premises. The respondent appealed. The learned appellate judge allowed the appeal. The appellant appealed to the Court of Appeal.

Held, allowing the appeal: (1) in the circumstances of the present case and where there appears that the judge had not misdirected himself and the recorded evidence did not unmistakably disclose that the judge had failed to take proper advantage of his having seen and heard the witnesses, the learned appellate judge ought not to have treated the matter at large and to reverse the decision of the trial judge;

(2) in this case the safest and, in principle, the correct course was to accept the trial judge's decision and to conclude that there was not sufficient material for the learned appellate judge to reject the result arrived at by the trial judge;

(3) the trial judge's decision was restored.

Cases referred to:

(1) *Watt (Thomas)* v. *Thomas* [1947] A.C. 484.
(2) *Benmax* v. *Austin Motor Co.* [1955] 1 All E.R. 326.

COURT OF APPEAL.

Y.R. Jumabhoy (*P. Balagopal* with him) for the appellants.

Karuppan Chettiar for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): This appeal is from the decision of the High Court allowing the respondent's appeal against the judgment of a District Court awarding the appellants possession of premises known as No. 20 Klang Road, Singapore, ("the premises"), and damages against the respondent and one Ramasamy, the 2nd defendant in the action. Ramasamy, however, is not a party to this appeal.

It may be helpful to first set out the background facts which are not in dispute. The appellants are the administrators of the estate of their deceased mother Perumal Ramayee, the widow of their deceased father S.A. Renganathan. Perumal Ramayee died on September 18, 1973. The respondent is the widow of G. Sarangapany. Before his death S.A. Renganathan was the managing partner of a firm trading in textiles under the style or firm name of Sithi Vinayagar Company ("S.V. Co."). G. Sarangapany was the other partner of S.V. Co.

Under the partnership agreement, on the death of a partner his share devolves on the surviving partner. S.A. Renganathan died on May 2, 1973, and accordingly Sarangapany became the sole proprietor of S.V. Co. Sarangapany died on March 16, 1974, and under his will his widow, the respondent, as sole beneficiary became the proprietor of S.V. Co.

In the year 1962, Perumal Ramayee purchased